

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KENNETH MIMNAUGH,

Plaintiff

v.

C R BARD INCORPORATED, et al.,

Defendants.

Case No. 2:19-cv-04166-JDW

MEMORANDUM

Kenneth Mimnaugh has abandoned this case. He stopped communicating with his lawyers, making it impossible for them to prepare discovery responses. Indeed, even after the Court ordered him to provide responses, he did not participate in the case. The Court will therefore dismiss his case. The Court will do so pursuant without prejudice, so that if Mr. Mimnaugh has a reason to renew his claims, he will have an opportunity to do so.

I. BACKGROUND

Mr. Mimnaugh claims harm from an Inferior Vena Cava filter that was implanted in him. He filed his case as part of a multi-district proceeding, *In re Bard IVC Filters Prods. Liab. Litig.*, MDL No. 2641, in the District of Arizona. In September 2019, the MDL court transferred the case to this Court for proceedings relating to Mr. Mimnaugh's individual claims. The Court held an initial pretrial conference on April 14, 2020, and issued a Scheduling Order on April 16, 2020.

On May 4, 2020, Mr. Mimnaugh's counsel moved to withdraw from the case, claiming that a conflict had arisen between them and Mr. Mimnaugh. The Court denied that motion. On May 8, 2020, Mr. Mimnaugh's counsel renewed their motion, explaining that Mr. Mimnaugh had ceased

communication with his counsel. On May 13, 2020, the Court had a telephone conference with counsel and then denied the renewed motion.

On May 18, 2020, Defendants filed a motion to compel Mr. Mimnaugh's discovery responses. They represented in that motion that Mr. Mimnaugh had not responded to discovery at all. The Court granted that motion on May 20, 2020, and ordered Mr. Mimnaugh to respond by June 3, 2020.

On June 4, 2020, Defendants filed this Motion. In it, they explain that Mr. Mimnaugh still has not responded to discovery, despite the Court's Order. In response, Plaintiff's counsel has explained that they have made repeated efforts to contact Mr. Mimnaugh, including providing him with copies of the Court's Order compelling discovery responses via Federal Express, calling him, and leaving him a message. In all, counsel explains that they have called Mr. Mimnaugh more than 15 times without a response, plus mailing him information.

II. ANALYSIS

Federal Rule of Civil Procedure 41(b) permits a court to dismiss a case if a plaintiff fails to prosecute a case. *See* Fed. R. Civ. P. 41(b). Here, Mr. Mimnaugh's conduct demonstrates his failure to prosecute this case. He has not communicated with his counsel for six months. He has ignored phone messages. He has not reached out even after receiving the Court's Order compelling his discovery responses. His counsel has done their best to contact him and keep in engaged, and he has rebuffed those attempts. The Court does not know if Mr. Mimnaugh still wants to pursue this claim, but it will not stand by to find out. Instead, it will dismiss this case. However, Rule 41(b) gives the Court discretion to dismiss a case without prejudice, and the Court will do so here. That way, if Mr. Mimnaugh surfaces and decides to pursue his claim, he can have a second bite at the apple.

III. CONCLUSION

Mr. Mimnaugh has chosen not to pursue this case. The Court will therefore dismiss it. An appropriate Order follows.

BY THE COURT:

Dated: June 30, 2020

/s/ Joshua D. Wolson
JOSHUA D. WOLSON, J.